Supreme Court, U. S.
FILED
JUL 21 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1418

MADELINE BUCHANAN, ET AL.,
Appellants,

vs.

BRENDA EVANS, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE.

BRIEF IN REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM.

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I. THE CASE IS RIPE FOR APPEAL.

The parallel between this case and *Milliken* v. *Bradley*, 418 U. S. 717 (1974), already described in Appellants' Jurisdictional Statement, is now made complete by Appellees' contention that the decision below is not ripe for adjudication by this Court. There, as here, the plaintiffs asserted that in the absence of a formulated plan and judgment thereon, the case should not be decided by this Court. The decision in *Milliken*, over the objection of dissenting Justices, was that the case was reviewable at the point of a trial court order for submission of an interdistrict plan. Again, the case here is stronger than *Milliken*.

Despite assertion of the Appellants to the contrary, the court below enjoined the enforcement of a state statute. The order of the three-judge court below, whose jurisdiction was invoked only because injunction against the enforcement of the Educational Advancement Act was sought, reads in part as follows:

> In preparing any inter-district plan, the Defendant State Board of Education *is enjoined* from relying upon those provisions of the Educational Advancement Act of 1968 found unconstitutional by this Court. [Jurisdictional Statement, A46. Emphasis added.]

The decision below was not merely a declaration of invalidity of the Educational Advancement Act but an injunction against its enforcement.

II. THE EDUCATIONAL ADVANCEMENT ACT MADE NO RACIAL CLASSIFICATIONS.

In arguing the merits, the Appellees assert that the Educational Advancement Act invoked racial classifications. The falsity of that proposition was demonstrated in our Jurisdictional Statement. We repeat here only the fact that there is no more basis for drawing such an inference from this statute than existed in this Court's decisions dealing with other statutes where similar arguments were futilely asserted. See, *e.g.*, *Jefferson* v. *Hackney*, 406 U. S. 535, 537-38 (1972); *James* v. *Valtierra*, 402 U. S. 137 (1971); *Palmer* v. *Thompson*, 403 U. S. 217 (1971); *San Antonio Independent School District* v. *Rodriquez*, 411 U. S. 1 (1973). *Cf.* 20 U. S. C. § 1715, which unlike the statute in question here does direct itself to school desegregation.

CONCLUSION.

If *Milliken* v. *Bradley* is still "the law of the land," the judgment below should be reversed summarily. Unless *Milliken* v. *Bradley* is to be overruled *sub silentio*, this Court cannot conscientiously affirm the judgment below or dismiss this appeal.

Respectfully submitted,

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